

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

PARCEL FIVE ASSOCIATES
Respondent

Case No.: I-00-20400
I-02-72053

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 21 Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 00-20400) served by first-class mail, the Government charged Respondent Parcel Five Associates with a violation of 21 DCMR 700.3 for allegedly failing to properly store and containerize solid wastes.¹ The Notice of Infraction alleged that Respondent violated § 700.3 on February 5, 2002 at 1408 Girard Street, N.W., and sought a fine of \$1,000.

Respondent did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e) and 2-1802.05). Accordingly, on April 2, 2002, this administrative court issued an order finding Respondent in default, assessing a statutory penalty

¹ 21 DCMR 700.3 provides: “All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.”

of \$1,000 as required by D.C. Official Code § 2-1801.04 (a)(2)(A), and requiring the Government to serve a second Notice of Infraction.

The Government served the second Notice of Infraction (No. 72053) on April 9, 2002. On April 11, 2002, Respondent filed an untimely plea of Deny to the first Notice of Infraction pursuant to D.C. Official Code § 2-1801.02(a)(3), along with a request for a hearing.²

An evidentiary hearing was held on May 8, 2002. Nathaniel Hill, the charging inspector in this case, appeared at the hearing on behalf of the Government. Terri Richardson, resident manager of the subject property, appeared on behalf of Respondent. Respondent sought leave to amend its plea from Deny to Admit with Explanation, pursuant to D.C. Official Code § 2-1802.02(a)(2), which was granted without objection by the Government. Respondent also requested a reduction or suspension of any fines or statutory penalties.

As to the substance of the violation, Ms. Richardson explained that she has two full-time staff whose duties include clearing the area behind Respondent's building and ensuring that no trash is stored there improperly. Ms. Richardson explained that the alley behind Respondent's building is shared by several residential buildings, and speculated that tenants in those buildings as well as random passers-by leave trash in the alley. Ms. Richardson noted that she holds each tenant in Respondent's building responsible for proper trash disposal, and has issued notices to specific tenants who have been found to have improperly disposed of their trash. Finally, Ms. Richardson represented that since the issuance of the Notices of Infraction, she has requested that her hauler supply her with a larger receptacle.

² In light of Respondent's plea, the second Notice of Infraction (No. 72053) will be dismissed as moot.

As to Respondent's failure to timely answer the Notices of Infraction, Ms. Richardson explained that the first Notice of Infraction was sent to Respondent's main office and there was an apparent delay in forwarding it to her for a response. The Government recommended without factual elaboration that there be no reduction or suspension of either authorized fine or the statutory penalty.

II. Findings of Fact

1. By its plea of Admit with Explanation, Respondent has admitted violating 21 DCMR 700.3 at 1408 Girard Street, N.W. on February 5, 2002.
2. On February 5, 2002, Respondent failed to store and containerize for collection solid wastes in a manner that "will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard" at 1408 Girard Street, N.W. 21 DCMR 700.3.
3. Respondent's trash receptacle is located in the back of its building and is not secured by a lock or other means.
4. At the time of the admitted violation, Respondent had two full-time staff whose duties included cleaning the area behind Respondent's building. In addition, Respondent's tenants are held responsible for proper trash disposal, and Respondent's resident manager has issued notices to specific tenants who have been found to have improperly disposed of their trash behind Respondent's building.

5. The alley behind Respondent's building is shared by several residential buildings. Unidentified persons routinely dispose of trash improperly in the alley.
6. Since the issuance of the Notices of Infraction, Respondent has requested its hauler to supply the building with a larger trash receptacle.
7. Respondent has accepted responsibility for its unlawful conduct.
8. There is no evidence in the record of a history of non-compliance by Respondent.
9. Respondent failed to timely answer the first Notice of Infraction (00-20400) due to delay in transmitting it from Respondent's main office to the subject property's resident manager for a response.

III. Conclusions of Law

1. Respondent violated 21 DCMR 700.3 on February 5, 2002. A fine of \$1,000 is authorized for a first violation of this regulation.³ 16 DCMR §§ 3201.1(a)(1) and 3216.1(b).
2. Respondent has requested a reduction or suspension of the authorized fine. Under these facts, a reduction, although not a suspension, of the authorized fine is appropriate. Respondent's speculation that neighbors and random passers-by dump trash in and around its receptacle is unavailing, particularly in light of the

³ The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. See 47 D.C. Reg. 8962 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 700.3. 47 D.C. Reg. at 6339 (August 11, 2000).

evidence in the record that Respondent's receptacle is left open and unsecured in the back of its building. *See DOH v. Lin*, OAH No. I00-70185, at 2-3 (Final Order, January 29, 2002) (finding conditions leading to violation of § 700.3 "foreseeable and easily preventable" where respondents noted long-standing problem of homeless persons rummaging through their trash, but undertook no efforts to secure trash receptacle). In addition, Respondent has admitted that, on occasion, its own tenants have been found to have improperly stored their trash behind the building.

3. In light of Respondent's acceptance of responsibility, on-going efforts to comply with the requirements of § 700.3 and the lack of a prior history of non-compliance, however, I will reduce the fine to \$500. *See* D.C. Official Code §§ 2-1802.02(a)(2) and 2-1801.02(b)(6); U.S.S.G. 3E1.1; 18 U.S.C. § 3553.
4. Respondent has also requested a reduction or suspension of the assessed statutory penalty. The Civil Infractions Act, D.C. Official Code §§ 2-1802.02(f) and 2-1802.05, requires the recipient of a Notice of Infraction to demonstrate "good cause" for failing to answer it within twenty days of the date of service by mail. If a party cannot make such a showing, the statute requires that a penalty equal to the amount of the proposed fine be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f).
5. Respondent has explained that its response to the first Notice of Infraction was untimely because there was a delay in transmitting it to Respondent's resident manager for the subject property. Apparently, Respondent has decided against

instituting a centralized mechanism for responding to official government correspondence, and instead has opted to have its resident managers respond on its behalf. Having made such a business decision, however, it is “appropriate that Respondent bear any risks associated with that business decision” such as delays in communication between Respondent’s main office and its resident managers. *DOH v. Washington Rehabilitation*, OAH No. I-00-20331 at 4 (Final Order, March 12, 2002); *see also DOH v. Stripping Workshop*, OAH No. I-00-20027 at 3-4 (Final Order, February 6, 2001).

6. Respondent has, therefore, failed to demonstrate good cause for its untimely plea. Accordingly, Respondent is liable for a statutory penalty in the amount of \$1,000, and it will be imposed without reduction.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this ____ day of _____, 2002:

ORDERED, that the second Notice of Infraction (No. 72053) is hereby **DISMISSED AS MOOT**; and it is further

ORDERED, that Respondent shall pay a fine and statutory penalties in the total amount of **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **05/28/02**

Mark D. Poindexter
Administrative Judge